

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

June 21, 2012

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RE: *Farm Family Casualty Insurance Co. v. Forrest River, Inc. and Renegade
Kibbi LLC v. Superwinch, Inc.*
C.A. No. S08C-10-011 RFS

Dear Counsel:

This is my decision on the motion for summary judgment filed by Third Party Defendant Superwinch, Inc. and Superwinch, LLC (“Superwinch”) on Defendant/Third Party Plaintiff Renegade/Kibbi LLC’s (“Kibbi”) Third-party complaint.¹ The motion is denied.

Superwinch manufactures and sells winch and cable systems for installation on rear access doors on load bearing trailers. Kibbi manufactures trailers, often using Superwinch products. One such trailer, used to transport race cars, was purchased by

¹Super.Ct.Civ.R. 14.

Orville S. Syester, Jr., Farm Family's subrogee. While lowering the rear door, a malfunction occurred and Syester was injured. Farm Family paid for his associated medical costs and now seeks recovery of those costs. Briefing is complete on Third-Party Defendant Superwinch's motion for summary judgment on Kibbi's third-party complaint.

Summary judgment is granted only where, viewing the facts in a light most favorable to the non-moving party, there is no material issue of fact.²

Superwinch argues first that direct subrogation claims by Farm Family are barred by the three year statute of limitations established in 10 *Del.C.* § 8106.³ Kibbi did not address this issue in its response, nor did Superwinch in its reply. Farm Family made no direct subrogation claims against Superwinch, and summary judgment on this issue is denied.

Superwinch also argues that its product was not defective at the time it was sold to Kibbi and that Kibbi's installation created the dangerous condition which caused Syester's injuries. Both Superwinch and Kibbi base their arguments on reports filed by five expert witnesses, all of whom inspected the trailer and reviewed related documents.

²*Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334 (Del.Super.1973).

³In reliance on *Harper v. State Farms Mutual Automobile Ins. Co.*, Superwinch reasons that Family Farms began PIP payments prior to October 7, 2008, the date the original complaint was filed, and that more than three years have passed since that time. The *Harper* Court held that a PIP carrier's statutory right to subrogation "does not accrue until the PIP benefit is paid to or for its insured." In applying *Harper*, this Court held in *Nationwide General Ins. Co. v. Hertz Corp.*, that the statute of limitations on subrogation claims begins to run when PIP benefits are fully paid, a date which Superwinch has not provided. Moreover, when a plaintiff's case against a joint tortfeasor is barred by a statute of limitations, that joint tortfeasor may still be liable to the remaining tortfeasor for contribution even though the plaintiff may no longer recover directly from the tortfeasor whose claim was time-barred. *New Zealand Kiwifruit Mktg. Bd. v. City of Wilmington*, 825 F.Supp. 1180 (D.Del.1993).

The experts agree that the Superwinch hook and safety latch were in an unsafe condition post-failure, but none concludes that the Superwinch product was defective or caused the injury. The reports raise fact questions such as, but not limited to, how the degradation of the Superwinch product occurred, whether the failure of the hook and ring could have been avoided and, if so, by whom and finally whether the type of hook was the right choice for the high heavy door on the trailer.

Generally, causation is a jury question, and this case is no exception. Superwinch has failed to show that no questions of fact exist as to its product, and summary judgment is denied.

As to the alleged breach of warranties, Superwinch argues that because its product was not defective there is no breach of the implied warranty of merchantability. As stated above, questions about the nature of the winch and cable system are fact questions for the jury. As to the breach of warranty for a particular purpose, the parties disagree as to whether Superwinch knew of Kibbi's proposed application and whether it was approved by Superwinch. This is a fact question and summary judgment is denied.

The Superwinch motion for summary judgment is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary